

## **Exhibit 4**

**FILED: NEW YORK COUNTY CLERK 10/29/2013**

INDEX NO. 651786/2011

NYSCEF DOC. NO. 953

RECEIVED NYSCEF: 10/29/2013

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the matter of the application of

THE BANK OF NEW YORK MELLON (as Trustee under  
various Pooling and Servicing Agreements and Indenture Trustee  
under various Indentures), *et al.*

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial  
instructions and approval of a proposed settlement.

Index No. 651786/2011

Assigned to: Kapnick, J.

**RESPONDENTS' JOINT BRIEF IN OPPOSITION TO APPROVAL  
OF PROPOSED SETTLEMENT AND ENTRY OF PROPOSED  
FINAL ORDER AND JUDGMENT**

8.05; SOE ¶ 58. And loan file review is not the uncertain exercise the Petitioners claim. Rather, it is a generally accepted methodology used in almost every aspect of RMBS purchasing, due diligence, and litigation. Tr. (Burnaman) 2890:7-2891:15, 2977:8-12; Tr. (Cowan) 4103:3-23; *MBIA Ins. Corp. v. Countrywide Home Loans Inc.*, 30 Misc. 3d 1201(A), 2010 WL 5186702 (Sup. Ct. N.Y. Cnty. 2010).<sup>10</sup> BNYM could also have easily used available tools, including BofA's own databases, to target those loans that have the highest probability of containing defects. SOE ¶ 72.

In sum, the GSE proxy cannot reasonably form the basis of the settlement. Far from being transparent, it was a selectively adjusted proxy, controlled entirely by the liable party, and based on materially different loans than the ones in the Covered Trusts.

2. BNYM's Only Investigation of the Settlement Amount Was the Work Performed by Mr. Lin, Who Unreasonably Adopted BofA's Unverified Numbers, Rejected in Whole the Institutional Investors' More Favorable Analysis, and Otherwise Artificially Deflated the Settlement Range

Having chosen not to look at the primary evidence of the liability, BNYM's "investigation" and "evaluation" of the representation and warranty claims consisted of hiring Mr. Lin to evaluate the presentations made by BofA and the Institutional Investors, and from those derive a purportedly "reasonable" settlement range. In the end, Mr. Lin constructed an inapposite methodology, populated it with unverified data, and skewed the result by failing to account for all available data. The result was to severely undervalue the Covered Trusts' claims and to derive an unreasonably low settlement range.

Mr. Lin's approach consisted of three steps: (1) estimate aggregate lifetime losses to the Trusts, (2) multiply the losses by an assumed breach rate, and (3) multiply the product of that

---

<sup>10</sup> Also, in the recent ResCap bankruptcy proceedings, Judge Glenn approved the use of a loan file sampling. See *In re Residential Capital LLC*, No. 12-12020, Doc. No. 4102 at 44-45 (Bankr. S.D.N.Y. June 27, 2013) (Memo. Opinion Approving the Plan Support Agreement).

Dated: October 29, 2013

REILLY POZNER LLP

By: s/ Michael A. Rollin

Daniel Reilly  
Michael Rollin  
1900 Sixteenth St., Ste. 1700  
Denver, Colorado 80202  
Telephone: (303) 893-6100  
Fax: (303) 893-1500  
dreilly@rplaw.com  
mrollin@rplaw.com

*Attorneys for AIG Entities*

HALPERIN BATTAGLIA RAICHT, LLP

By: s/ Donna H. Lieberman

Donna H. Lieberman  
Scott A. Ziluck  
40 Wall Street, 37<sup>th</sup> floor  
New York, New York 10005  
(212) 765-9100  
dlieberman@halperinlaw.net  
sziluck@halperinlaw.net

*Attorneys for United States  
Debt Recovery, LLC VIII, L.P.,  
and United States Debt Recovery X, L.P.*

MILLER & WRUBEL P.C.

By: s/ John G. Moon

John G. Moon  
570 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 336-3500  
Fax: (212) 336-3555  
jmoon@mw-law.com

*Attorneys for the Triaxx Entities*

CIFG Assurance North America, Inc.

By: s/ Sarah E. Lieber

Sarah E. Lieber  
CIFG Assurance North America, Inc.  
850 Third Avenue, 10th Floor  
New York, New York 10022  
Telephone: (212) 909-0425